

Millennium Challenge Corporation
Program Procurement Guidance

Guidance on Contract Payments

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MCC Guidance on Contract Payments

This paper provides guidance to the MCA Entity¹ for developing contract payment schedules in accordance with the terms of payment provisions² of the MCC Program Procurement Guidelines:³

Partial Payments

Payment terms that provide for multiple payments, each upon acceptable partial performance of the contract, are the preferred form of payment for all MCC-funded contracts, whether for goods, works or services. Although payments for partial performance generally are treated as a method of payment and not as a method of contract financing, payment for partial performance can provide suppliers and contractors, including consultants, with needed working capital to perform the contract without use of an advance payment to provide contract financing. When appropriate, the contract deliverables and the payment schedule should be designed to permit acceptance and payment for discrete portions of contract performance that comply with applicable contract terms as soon as accepted. During the early stages of contract performance, payments may be scheduled for deliverables of such tasks or items of work as (1) a work plan or inception report, (2) achievement of defined milestones, such as orders placed or staff mobilized, (3) establishment of an office, and (4) deposits on goods or services required for contract performance. Once the contractor has mobilized, the payments would most likely be less frequent and the deliverables to trigger payment would be tied to performance of the programmatic work, such as a percentage or stage of completion, accomplishment of defined milestones or other quantifiable measures of results. Final payment is made only after all contract performance is completed and accepted. Normally, a percentage of the contract amount is retained for a period of time after physical completion and delivery of goods or works. Retentions are not normally used under contracts for services.

Note that the MCC Program Procurement Guidelines require that procurement contracts provide for payment of interest for late payment due to the fault of the MCA Entity or its agents beyond the time allowed in the contract,⁴ thereby promoting timely payment and reducing the need for suppliers and contractors to self-finance for extended periods of time.

Advance Payments

Advance payments are advances of funds to a supplier or contractor before, in anticipation of, and for the purpose of performance under the contract. Since these payments are not measured by contract performance,

¹ The MCA Entity is the entity designated by the government of the country receiving assistance from the Millennium Challenge Account as responsible for the oversight and management of implementation of the Compact on behalf of the government.

² MCC Program Procurement Guidelines at Section 1.A, Paragraphs 2.34-2.36 and Section 1.B, Paragraph 4.8.

³ The Millennium Challenge Corporation (“MCC”) provides funding to foreign governments under the authority of Section 605 of the Millennium Challenge Act of 2003 (the “MCA”) (each a “Compact”) or under Section 609(g) of the MCA (each a “609g Grant Agreement”). The MCC Program Procurement Guidelines are set out in supplemental agreements between the MCC and foreign governments and apply to MCC-funded contracts between the MCA Entity and contractors, suppliers and consultants. Contracts entered into directly by MCC are governed by the Federal Acquisition Regulations, not the MCC Program Procurement Guidelines.

⁴ MCC Program Procurement Guidelines at Section 1.A, Par. 2.34 and Section 1.B, Par. 4.9(b).

they differ from partial payments which are based on actual performance of tasks in furtherance of the contract. Advance payments may be advisable to cover the initial mobilization expenses for large civil works or custom-made goods but are seldom appropriate payment terms in contracts for services or commercial goods. Generally, advance payments are liquidated from payments made to the supplier or contractor during performance of the contract, usually by deducting a percentage from each scheduled payment for performance.

Because advance payments are made before the MCA Entity receives any value for the funds, advance payments must be justified under the circumstances of the procurement. *Advance payments require prior approval of MCC.*

If an advance payment is authorized:

- written justification for the advance payment must be set out in the record of the procurement;⁵ and,
- the supplier or contractor must be required to provide an advance payment bond or guaranty in the amount of the advance, which will be released only after the advance is fully liquidated.

For contracts subject to MCC approval, compliance with these requirements will be reviewed by MCC.⁶ For contracts not subject to prior review by MCC, the record will be reviewed during MCC post reviews.⁷

Progress Payments Based on Costs

Progress payments based on costs are appropriate only in the case of cost-reimbursement type of contracts. MCC generally recommends against cost-reimbursement contracts because they are extremely difficult for the MCA Entity to administer. In accordance with the “Cost Principles for Cost-Reimbursement Contracts under MCC-Financed Grants,”⁸ the MCA Entity must ensure that all costs under the contract are appropriately recorded and justified. Progress payments based on costs would be made based on the documentation supporting the costs incurred by the supplier or contractor as work progresses under the contract.

⁵ Part 2 of MCC Program Procurement Guidelines requires that the MCA Entity ensure that complete and uniform procurement records are maintained.

⁶ The thresholds for review of procurement decisions prior to award of a contract are set out in Attachment 1 of the MCC Program Procurement Guidelines.

⁷ MCC Program Procurement Guidelines, Section 1.A, Appendix 1 and Section 1.B, Appendix 1.

⁸ See <http://www.mcc.gov/countrytools/compact/mcc-2007-cost-principles.pdf>.